

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

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JEANNE HICKS, Clerk

By Deputy

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: March 8, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk
Yavapai County Attorney
Bill Hughes, Esq.
Steven Sisneros, Esq.
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

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425 E. Gurley
Prescott, AZ 86301

Luis Li, Esq.
Brad Brian, Esq.
Truc Do, Attorney at Law
Miriam Seifter, Attorney at Law
MUNGER TOLLES & OLSON LLP
355 S. Grand Avenue, 35th Fl.
Los Angeles, CA 90071

(Defendant)

(For Defendant)

**RULING ON DEFENDANT'S STATEMENT OF COSTS AND STATE'S MOTION
FOR RECONSIDERATION OF IMPOSITION OF MONETARY SANCTIONS**

The Court has considered the Defendant's Statement of Costs Regarding Motion to Compel, the State's Objection to the Defendant's Statement of Costs, the State's Motion for Reconsideration of Imposition of Monetary Sanction, the Response to the Motion for Reconsideration, and the Reply to that Motion.

The Court concludes that the Statement of Costs is not adequately itemized and supported with documentation. Moreover, the amount requested is excessive as it is not commensurate to the disclosure violation found by this Court.

The information sought by the defense was simply not work product. Although they are expert witnesses, the medical examiners are independent witnesses. Once the State provided material to the medical examiners to be considered in formulating opinions on the cause of death, those materials could not be considered work product.

The meeting among the medical examiners, members of the County Attorney's Office, and law enforcement officials is likewise not protected by the work product privilege. The defense was entitled to discover what information was presented to the medical examiners at that meeting and who provided that information. These expert witnesses are also essentially fact witnesses who are not in any manner to be "controlled" by either party. Thus, the State should not have limited the scope of the interviews of the medical examiners. Any monetary sanction should relate only to this aspect of the discovery dispute and should relate primarily to the time actually needed for supplemental telephonic interviews in this limited area. (The dispute over providing attorney or other notes relating to the meeting involved a good faith disagreement in an unsettled area of law. No sanctions are appropriate as to that aspect of the motion to compel.)

Resolution of the disclosure issue did not necessitate extensive briefing and oral argument. In fact, the Court believes it may have been possible for the parties to resolve the issue by submitting it to the Court during or close to the time of conducting the interviews of the medical examiners. The Court recognizes, however, that some formal pleading ultimately was necessary in order to present the issue to the Court.

The Court sustains the State's objection to the statement of costs, and the attorneys for the Defendant are directed to submit a revised statement. The State's motion for reconsideration is denied. Any party requesting a hearing/oral argument on the issue of monetary sanctions must do so in writing.

DATED this 8th day of March, 2011.


Warren R. Darrow
Superior Court Judge

cc: Victim Services Division